

Environmental Protection Agency

§ 2.309

to information to which this section applies, except that—

(1) Notwithstanding § 2.205(i), the General Counsel or his designee, rather than the Regional counsel, shall in all cases make the determinations and take the actions required by § 2.205;

(2) In addition to the circumstances mentioned in § 2.205(f)(1), notice in the form prescribed by § 2.205(f)(2) shall be furnished to each affected business whenever information is found to be entitled to confidential treatment under section 408(f) of the Act but not otherwise entitled to confidential treatment. With respect to such cases, the following sentences shall be substituted for the third sentence of § 2.205(f)(2): “With respect to EPA’s implementation of the determination, the notice shall state that (subject to § 2.210) EPA will make the information available to the public on the thirty-first (31st) calendar day after the business’s receipt of the written notice (or on such later date as is established in lieu thereof under paragraph (f)(3) of this section), unless the EPA legal office has first been notified of the business’s commencement of an action in a Federal court to obtain judicial review of the determination and to obtain preliminary injunctive relief against disclosure; provided, that the information will not be made available to the public for so long as it is entitled to confidential treatment under section 408(f) of the Federal Food, Drug and Cosmetic Act, 21 U.S.C. 346a(f).”; and

(3) Notwithstanding § 2.205(g), the 31 calendar day period prescribed by § 2.205(f)(2), as modified by paragraph (f)(2) of this section, shall not be shortened without the consent of the business.

(g) [Reserved]

(h) *Substantive criteria for use in confidentiality determinations.* Section 2.208 does not apply to information to which this section applies. Such information shall be determined to be entitled to confidential treatment for so long as this section continues to apply to it.

(i) *Disclosure in special circumstances.* (1) Section 2.209 applies to information to which this section applies. In addition, under Section 408(f) of the Act, 21 U.S.C. 346a(f), EPA is authorized to dis-

close the information to other persons. Such authority under section 408(f) of the Act may be exercised only in accordance with paragraph (i)(2) or (i)(3) of this section.

(2) Information to which this section applies may be disclosed (notwithstanding the fact that it otherwise might be entitled to confidential treatment under this subpart) to a person under contract to EPA to perform work for EPA in connection with the Act, with the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, or regulations which implement either such Act, if the EPA program office managing the contract first determines in writing that such disclosure is necessary in order that the contractor may carry out the work required by the contract. Any such disclosure to a contractor shall be made only in accordance with the procedures and requirements of § 2.301(h)(2) (ii) through (iv).

(3) Information to which this section applies may be disclosed by EPA to an advisory committee in accordance with section 408(d) of the Act, 21 U.S.C. 346a(d).

[41 FR 36902, Sept. 1, 1976, as amended at 43 FR 40005, Sept. 8, 1978]

§ 2.309 Special rules governing certain information obtained under the Marine Protection, Research and Sanctuaries Act of 1972.

(a) *Definitions.* For the purposes of this section:

(1) *Act* means the Marine Protection, Research and Sanctuaries Act of 1972, 33 U.S.C. 1401 *et seq.*

(2) *Permit* means any permit applied for or granted under the Act.

(3) *Application* means an application for a permit.

(b) *Applicability.* This section applies to all information provided to or obtained by EPA as a part of any application or in connection with any permit.

(c) *Basic rules which apply without change.* Sections 2.201 through 2.207 and 2.209 through 2.215 apply without change to information to which this section applies.

(d) *Substantive criteria for use in confidentiality determinations.* Section 2.208 does not apply to information to which

§2.310

40 CFR Ch. I (7–1–11 Edition)

this section applies. Pursuant to section 104(f) of the Act, 33 U.S.C. 1414(f), no information to which this section applies is eligible for confidential treatment.

[41 FR 36902, Sept. 1, 1976, as amended at 43 FR 40005, Sept. 8, 1978]

§2.310 Special rules governing certain information obtained under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended.

(a) *Definitions.* For purposes of this section:

(1) *Act* means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, including amendments made by the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. 9601, *et seq.*

(2) *Person* has the meaning given it in section 101(21) of the Act, 42 U.S.C. 9601(21).

(3) *Facility* has the meaning given it in section 101(9) of the Act, 42 U.S.C. 9601(9).

(4) *Hazardous substance* has the meaning given it in section 101(14) of the Act, 42 U.S.C. 9601(14).

(5) *Release* has the meaning given it in section 101(22) of the Act, 42 U.S.C. 9601(22).

(6) *Proceeding* means any rulemaking or adjudication conducted by EPA under the Act or under regulations which implement the Act (including the issuance of administrative orders under section 106 of the Act and cost recovery pre-litigation settlement negotiations under sections 107 or 122 of the Act), any cost recovery litigation under section 107 of the Act, or any administrative determination made under section 104 of the Act, but not including determinations under this subpart.

(b) *Applicability.* This section applies only to information provided to or obtained by EPA under section 104 of the Act, 42 U.S.C. 9604, by or from any person who stores, treats, or disposes of hazardous wastes; or where necessary to ascertain facts not available at the facility where such hazardous substances are located, by or from any person who generates, transports, or otherwise handles or has handled hazardous substances, or by or from any

person who performs or supports removal or remedial actions pursuant to section 104(a) of the Act. Information will be considered to have been provided or obtained under section 104 of the Act if it was provided in response to a request from EPA or a representative of EPA made for any of the purposes stated in section 104, if it was provided pursuant to the terms of a contract, grant or other agreement to perform work pursuant to section 104, or if its submission could have been required under section 104, regardless of whether section 104 was cited as authority for any request for the information or whether the information was provided directly to EPA or through some third person.

(c) *Basic rules which apply without change.* Sections 2.201 through 2.207 and §§2.209 through 2.215 apply without change to information to which this section applies.

(d) [Reserved]

(e) *Substantive criteria for use in confidentiality determinations.* Section 2.208 applies without change to information to which this section applies; however, no information to which this section applies is voluntarily submitted information.

(f) [Reserved]

(g)(1) Under section 104(e)(7)(A) of the Act (42 U.S.C. 9604(e)(7)(A)) any information to which this section applies may be disclosed by EPA because of the relevance of the information in a proceeding under the Act, notwithstanding the fact that the information otherwise might be entitled to confidential treatment under this subpart. Disclosure of information to which this section applies because of its relevance in a proceeding shall be made only in accordance with this paragraph (g).

(2) The provisions of §2.301(g)(2) are to be used as paragraph (g)(2) of this section.

(3) In connection with any proceeding involving a decision by a presiding officer after an evidentiary or adjudicatory hearing, except with respect to litigation conducted by a Federal court, information to which this section applies which may be entitled to confidential treatment may be made available to the public, or to one or